

STATE OF HAWAII
HAWAII LABOR RELATIONS BOARD

In the Matter of

UNITED PUBLIC WORKERS, AFSCME,
LOCAL 646, AFL-CIO,

Complainant,

and

FRANK DOYLE, Director, Department of
Environmental Services, City and County of
Honolulu, and JEREMY HARRIS, Mayor,
City and County of Honolulu,

Respondents.

CASE NO. CE-01-584

ORDER NO. 2312

ORDER GRANTING COMPLAINANT'S
MOTION FOR SUMMARY JUDG-
MENT, FILED DECEMBER 14, 2004

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On December 14, 2004, Complainant, the UNITED PUBLIC WORKERS AFSCME, LOCAL 646, AFL-CIO (Complainant or UPW) moved for summary judgment,¹ against Respondents FRANK DOYLE, Director, Department of Environmental Services, City and County of Honolulu, and JEREMY HARRIS, Mayor, City and County of Honolulu (Respondents or CITY) before the Hawaii Labor Relations Board (Board).

On December 22, 2004, Respondents filed their Memorandum in Opposition to Complainant's Motion for Summary Judgment filed on December 14, 2004, with Affidavits of Clark Hirota and Frank J. Doyle.²

On January 21, 2005, the Board conducted a hearing at which the parties, by and through their respective counsel, were given the opportunity to be heard.

¹See, Board Exhibit (Ex.) 4, Complainant's Motion for Summary Judgment; Memorandum in Support of Motion; Declaration of Dayton M. Nakanelua; Exs. 1-8.

²See, Board Ex. 5, Respondents' Memorandum in Opposition to Complainant's Motion for Summary Judgment Filed on December 14, 2004; Affidavit of Clark Hirota; Affidavit of Frank J. Doyle; Exs. A Through D.

Having considered the record and arguments presented, the Board hereby makes the following findings of fact, conclusions of law and order.

FINDINGS OF FACT

1. Complainant UPW is an employee organization and the exclusive representative, as defined in Hawaii Revised Statutes (HRS) § 89-2, of employees in bargaining unit (BU) 01.
2. JEREMY HARRIS, Mayor, City and County of Honolulu, at all times relevant, was the public employer within the meaning of HRS § 89-2.
3. FRANK DOYLE (DOYLE), at all times relevant, and in his capacity as the Director, Department of Environmental Services, City and County of Honolulu, was the designated representative of the public employer within the meaning of HRS §§ 89-2 and 89-13(a).
4. Commencing on and after July 1, 1972 to the present, the UPW and the City and County public employer have been parties to more than 13 successive collective bargaining agreements covering BU 01 employees. The BU 01 Contract contains provisions relating to union recognition (Section 1), and provisions on refuse collection task work or "uku pau" (Section 51). An April 25, 2003 memorandum of agreement extends the BU 01 Contract for the period covering July 1, 2003 to June 30, 2005.
5. Historically, residential refuse collection on the island of Oahu has been performed primarily by BU 01 employees in the refuse division of the Department of Environmental Services. The work practices of refuse division employees have been memorialized in the "policies and procedures on task work for refuse collection" dated 1973. Since the inception of collective bargaining the parties to the BU 01 Contract have recognized that changes in city refuse and related operations which affect wages, hours, and other terms and conditions of employment require negotiations.
6. In the 1990's, the UPW and CITY officials negotiated over modernization of the refuse collection operations through the automated refuse operation. The parties negotiated a series of memoranda implementing automated refuse conversion in approximately 70 to 85 manual routes. All phases of the changes relating to automated refuse were negotiated between the UPW and CITY under Section 1.05 and implemented between 1994 and 1999. The final phases of manual to automated refuse conversion were implemented pursuant to a March 2, 1998 memorandum of agreement.

7. By letter dated October 25, 2004, DOYLE informed the UPW of plans to discontinue unloading Honolulu green waste collection vehicles at Keehi Transfer Station, and asked to meet and confer over the proposed change. DOYLE explained that:

Honolulu green waste collection crews should be able to transport their loads across the Pali to Kalahco Green Waste Facility and still complete their routes within their 8-hour work day. Crews will be paid overtime when circumstances (traffic, breakdowns, etc.) prolong the work day beyond eight hours.

We propose to meet and confer with you and suggest Monday, November 1, 2004, at a time and place of your convenience. Please call me at 692-5159.³

8. By letter dated November 5, 2004, UPW's State Director, Dayton M. Nakanelua, responded to DOYLE's request to meet and confer, by submitting its First Request for Information Regarding Honolulu Green Waste Crews and asking DOYLE to "cease and desist from unilaterally implementing the changes until you have negotiated in good faith over the decisions and its affects on unit 1 employees."⁴
9. On November 29, 2004, having received no response to its First Request for Information Regarding Honolulu Green Waste Crews, the Union filed the instant prohibited practice complaint, alleging, inter alia, that Respondents were engaging in prohibited practices in violation of HRS §§ 89-13(a)(1), (5) and (7) by disregarding its request for information.⁵
10. The Board finds that the City did not provide the information requested by the Union in its First Request for Information on November 5, 2004.
11. The Board finds that the natural consequence of DOYLE's nonresponsiveness, leaves the UPW in the dark and unable to perform its job as the exclusive representative for the BU 01 employees impacted by the CITY's plans to

³See, Board Ex. 4, Complainant's Motion for Summary Judgment; Memorandum in Support of Motion; Declaration of Dayton M. Nakanelua; Ex. 7.

⁴Id., Ex. 8.

⁵At the hearing held before the Board on January 21, 2005, the Union withdrew its allegations of HRS § 89-13(a)(1) violation, i.e., contending that the CITY's failure to provide information requested interfered with the rights of employees under HRS § 89-9.

discontinue the unloading of green waste at the transfer station, and was therefore wilful.

DISCUSSION

The Union moves for summary judgment on the grounds that there is no genuine issue of material fact in dispute that the CITY has disregarded its request for information relating to the CITY's proposed plans to discontinue unloading Honolulu green waste at Kechi Transfer Station.

Summary judgment is proper where the moving party demonstrates that there are no issues of material fact in dispute and, therefore it is entitled to judgment as a matter of law. State of Hawaii Organization of Police Officers (SHOPO) v. Society of Professional Journalists - University of Hawaii Chapter, 83 Hawai'i 387, 389, 927 P.2d 386 (1996) (SHOPO). A fact is material if proof of that fact would have the effect of establishing or refuting the essential elements of a cause of action or defense asserted by the parties. Konno v. County of Hawaii, 85 Hawai'i 61, 937 P.2d 397 (1997) (Konno). Accordingly, the controlling inquiry is whether there is no genuine issue of material fact and the case can be decide solely as a matter of law. Kajiya v. Department of Water Supply, 2 Haw.App. 221, 629 P.2d 635 (1981).

In Decision No. 408, United Public Workers, AFSCME, Local 646, AFL-CIO and Benjamin J. Cayetano, et. al, 6 HLRB 89 (2000), the Board stated that the duty of the employer to supply relevant information needed by the exclusive bargaining agent to perform its statutory role and function, is "intertwined with the duty to bargain in good faith." The CITY does not dispute that the information requested by the Union is relevant and necessary prior to scheduling negotiations over the proposed changes to discontinue unloading green waste at the transfer station.⁶

⁶At the hearing, upon questioning by the Board Chair, Respondents' counsel stated:

Chairman Nakamura: Mr. Hirota, do you contest that the subject matter of the communication is a matter which must be negotiated?

Mr. Hirota: We believe it's management's rights to be able to redirect the bargaining unit if there's safety and health concerns involved. Perhaps the effects of those change of routes may be (sic) mandatory subject of bargaining, that that could be possible.

Chairman Nakamura: That can be possible?

Mr. Hirota: Well, that is certainly -- that would be a negotiable subject.

In opposing the Union's motion for summary judgment, DOYLE asserts that the CITY has not "refused to provide requested information to the Union, disregarded the Union's requests for information, nor acted willfully in violation of Chapter 89, HRS."⁷ These assertions fail to raise a material issue of fact since the CITY failed to show that any information was provided pursuant to Union's First Request for Information on November 5, 2004. Rather than providing a reasonable explanation⁸ for not responding to the UPW's

Chairman Nakamura: So you agree that any change in routes and hours would be a negotiable subject?

Mr. Hirota: Correct.

Chairman Nakamura: Then why wouldn't information requested regarding change in routes and hours be essential to negotiations on the part of the Union?

Mr. Hirota: Well, I'd just like to point out again, Doyle made an attempt to meet and confer with the Union. It's not like he totally ignored the Union from the very beginning. And regarding the information, I'm not certain if that meeting would have facilitated the information being turned over or not, but there was an attempt by Doyle initially.

Transcript of the hearing held on January 21, 2005 (Tr.) pp. 10-11.

⁷See Board Ex. 5, Affidavit of Frank K. Doyle, dated December 22, 2004, attached to Respondents' Memorandum in opposition to Complainant's Motion for Summary Judgment filed on December 14, 2004.

⁸In response to questions from Board Member Kunitake, Respondents' counsel stated:

Board Member Kunitake: So you're saying that the initial response to the Union's request came in October?

Mr. Hirota: Well, the initial response to the Union's concerns came in October. As far as I know, there was nothing - I don't know that the City submitted anything after the request was made in - the Union made its request in November.

Board Member Kunitake: So why shouldn't that be viewed as just a complete disregard of the relationship when there is no response - you know, the Union sends in something asking for information and

request for information, DOYLE chose instead to deny any inaction or nonresponsiveness. As a result, the Board finds that the natural consequence of DOYLE's nonresponsiveness, leaves the UPW in the dark and unable to perform its job as the exclusive representative for the BU 01 employees impacted by the CITY's plans to discontinue the unloading of green waste at the transfer station.

On this basis, the Board concludes that the CITY's failure to respond to the UPW's request for information relating to its plans to discontinue the unloading of green waste at Keehi Transfer Station, is tantamount to a refusal to bargain in good faith as required in HRS § 89-9.⁹ The Board also concludes the CITY's nonresponsiveness was wilful and constitutes a prohibited practice in violation of HRS §§ 89-13(a)(5) and (7).

CONCLUSIONS OF LAW

1. The Board has jurisdiction over the subject complaint pursuant to HRS §§ 89-5 and 89-14.
2. Summary judgment is proper where the moving party demonstrates that there are no genuine issues of material fact in dispute and, therefore it is entitled to judgment as a matter of law. SHOPO, supra. A fact is material if proof of that fact would have the effect of establishing or refuting the essential elements of a cause of action or defense asserted by the parties. Konno, supra.
3. Based on the entire record, and viewing the facts in the light most favorable to the CITY, the Board concludes there are no genuine issues of material fact that the CITY's nonresponsiveness to the UPW's request for information relating to plans to discontinue unloading green waste at the Keehi Transfer

Mr. Hirota:

gets no reply.

I don't have an answer to that. I don't know why, if or why Doyle didn't reply, or the Department didn't reply. You know, I don't know why they didn't reply.

⁹HRS § 89-9 Scope of Negotiations; consultation, provides in part:

(b) The employer or the exclusive representative desiring to initiate negotiations shall notify the other party in writing, setting forth the time and place of the meeting desired and the nature of the business to be discussed, sufficiently in advance of the meeting.

Station was wilful and constitutes a failure to bargain in good faith as required under HRS § 89-9, and therefore, a prohibited practice under HRS §§ 89-13(a)(5) and (7).

ORDER

1. The Board hereby grants the UPW's motion for summary judgment, and orders Respondents to cease and desist from refusing to provide information to the UPW as requested in its First Request for Information Relating to Green Waste.
2. The Board orders Respondents to immediately post copies of this decision in conspicuous places at its work sites where employees of Unit 01 assemble and congregate, and on the Respondents' respective websites for a period of 60 days from the initial date of posting.
3. Respondents shall notify the Board of the steps taken to comply herewith within 30 days of receipt of this order.

DATED: Honolulu, Hawaii, February 14, 2005

HAWAII LABOR RELATIONS BOARD


BRIAN K. NAKAMURA, Chair


CHESTER C. KUNITAKE, Member


KATHLEEN RACUYA-MARKRICH, Member

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